

ORIGINAL
FILE ✓

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG 3 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of :
: Policies and Rules for :
: Licensing Fallow 800 MHz :
: Specialized Mobile Radio :
: Spectrum Through a :
: Competitive Bidding Process :

RM-7985

To: The Commission

REPLY COMMENTS OF BELL SOUTH CORPORATION

BellSouth Corporation and BellSouth Enterprises, Inc. ("BellSouth"), hereby reply to comments filed by parties in the above-captioned matter. The comments were filed in response to a petition for rulemaking submitted by Fleet Call, Inc. ("Fleet Call"), asking that the Commission modify its rules regarding certain alleged unused spectrum now allocated to the Specialized Mobile Radio services ("SMR"). Fleet Call seeks to have this spectrum divided into "innovator blocks" and auctioned to the highest bidder.

BellSouth, in its initial comments, pointed out that Fleet Call's petition does not discuss or suggest any specifics concerning the auction scheme, leaving unanswered a number of important questions.¹ In addition, the petition contains no support for Fleet Call's basic assumption that

¹BellSouth Response, p. 3.

No. of Copies rec'd 074
List A B C D E

its proposal, i.e., auctioned innovator blocks, would impel greater spectrum efficiency or, for that matter, encourage greater use of the "fallow" SMR channels.² For these reasons, BellSouth opposed the request for rulemaking, suggesting, however, that should the proceeding go forward, any auction proposal should be open to any and all qualified bidders, including wireline telephone common carriers.

None of the seventeen or so commenting parties support the notion of competitively bid auctions for SMR-allocated spectrum; and most of the commenters oppose, in one way or another, the Fleet Call-sponsored innovator block regulatory proposal.³

It was rightly pointed out by a substantial number of parties that the SMR auction proposal is tailored to give Fleet Call an inside track--if not a downright monopoly--on digital SMR service. For example, the Special Industrial Radio Service Association ("SIRSA") states that "Fleet Call's proposal...appears to benefit only Fleet Call. Implementation of the proposal could promote anti-competitive acts and have a detrimental affect [sic] on the continued operation of localized systems that serve a specific community."⁴ Idaho Communications Limited

²BellSouth Response, p. 4.

³Dispatch Communications, Inc., Fleet Call's business partner, was the only party which wholeheartedly supported Fleet Call.

⁴SIRSA Statement, p. 5.

Partnership ("ICLP"), a sister SMR operation, complains that "[h]aving determined that it wishes to expand outside its six initial markets, Fleet Call proposes to freeze and hold all existing spectrum for one monopolistic license in each market, to the exclusion of existing entrepreneurs...."⁵

The Ericsson Corporation, an equipment manufacturer, argues that:

"Fleet Call is in effect urging the FCC to adopt the [Motorola] system as a de jure digital standard for the SMR industry. With only one manufacturer controlling the making of equipment to a de jure standard, prices of base stations and terminal equipment will not decrease. In a monopoly equipment market, there is no incentive for prices of equipment to be based on cost."⁶

All of these comments underscore the fact that the Fleet Call proposal is too narrowly tailored to be in the

⁵ICLP Opposition, p. 6.

⁶Ericsson Comments, p. 9. Ericsson also notes that "Fleet Call's proposal to have a series of regional auctions would appear to be designed to minimize the 'costs' of spectrum since bids could be based on the experience of other markets in which auctions had already taken place," further showing how the proposal was tailored specifically for the petitioner. Ericsson Comments, n.1. See also the Comments of Florida SMR Coalition, American Mobile Telecommunications Association, National Association of Business and Educational Radio, Telecommunications Industry Association, Southwestern Bell Corporation and McCaw Cellular Communications, Inc., generally expressing concern about the exclusivity of the Fleet Call proposal and how it likely would harm other legitimate interests.

public interest.⁷ Such comments also highlight the wisdom of the BellSouth position that full participation by all viable entries in the process "is necessary to enliven and perpetuate already existing competition, stimulate additional sources of capital, provide a greater technological base for innovation, and increase the likelihood of enhanced revenues to the government."⁸ Without the Commission's assurance that all viable players would be free to participate in the further development of SMR spectrum, this request for rulemaking by Fleet Call should not go forward.

Six of the commenting parties⁹ raise important policy issues concerning the relationship of the evolving SMR business and other wireless services, including cellular. For example, Southwestern Bell argues that if the purpose of the Fleet Call proposal is to give SMR operators the opportunity to provide "competitive, common carrier-like services, fair play would dictate that common carriers also

⁷Fleet Call's Petition itself shows that it controls from fifty percent to almost one hundred percent of the SMR channels in the six largest markets. Fleet Call has also formed a consortium for nationwide digital roaming. The areas included in the territory to be served by the consortium comprise 90 million people. See American Mobile Telecommunications Association's Comments, n.2.

⁸BellSouth Response, p. 7.

⁹Centel Corporation ("Centel"), Southwestern Bell Corporation ("Southwestern"), McCaw Cellular Communications, Inc. ("McCaw"), Telocator, and National Telephone Cooperative Association ("NTCA").

be allowed to provide private SMR services. Otherwise, operators such as Fleet Call would have a competitive advantage in being able to offer services which their common carrier competitors cannot."¹⁰ McCaw asserts that it has always "viewed [enhanced SMR] service as a direct competitor to cellular" and argues that the Commission should acknowledge that "cellular and ESMR service are comparable and competitive, and should be regulated under comparable rules."¹¹

Fleet Call does not address these issues in its Petition. Indeed, it presses its case as if these questions were negligible or nonexistent--which, of course, is not in the least the case.

McCaw also raises an important legal issue that the Commission must address, i.e., the difference between public and private carriage, and how that difference may affect the relative relationships among all wireless services.¹² Indeed, this is a significant issue in the Commission's ongoing PCS proceeding.¹³ For if the Fleet Call proposal in

¹⁰Southwestern Comments, p. 4. See also the comments of Telocator, NTCA, and Centel.

¹¹McCaw Comments, p. 5.

¹²See McCaw Comments, pp. 5-10.

¹³Amendment of the Commission's Rules to Establish New Personal Communications Services (General Docket No. 90-314 and ET Docket No. 92-100), News Release, July 16, 1992.

actual operation were to be deemed common carriage,¹⁴ then must it not operate subject to the panoply of common carrier rules and regulations, as well as state regulatory jurisdiction? On the other hand, if SMRs were directly competitive with certain wireless services, including cellular, what rationale is there for saddling these latter services with burdensome regulatory oversight while SMRs enjoy comparative freedom from such supervision?¹⁵ In such a case, the "playing field must be leveled," either statutorily or administratively.

The Commission has much work to do, therefore, in analyzing the legal implications resulting from the evolving issues emanating from all wireless services. Following such analysis, it then must rationalize and reconcile any administrative differences existing which, in practice, may prove to be inequitable or unfair. Or it must seek from Congress any changes which are necessary to align obsolete statutory schemes with modern-day reality.


¹⁴See NARUC v. FCC, 525 F.2d 630 (D.C. Cir. 1975), cert. denied, 425 US 992 (1976). SMRs' "actual operations [might] bring them within the common carrier definition.... [A] particular system is a common carrier by virtue of its functions, rather than because it is declared to be so." Id. at 644.

¹⁵See 47 U.S.C. § 332(c)(3), exempting dispatch services from state regulation. See also McCaw Comments, pp. 8-9; Telocator Comments, pp. 5-6; NTCA Statement, p. 5.

In any case, it is certainly premature--if not altogether improvident--to proceed with Fleet Call's petition. It should, therefore, be dismissed.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH ENTERPRISES, INC.

By: 
William B. Barfield
Charles P. Featherstun
Suite 1800
1155 Peachtree St., N.E.
Atlanta, GA 30367-6000

R. Frost Branon, Jr.
33 Office Park Rd., No. 4
Suite 307
Hilton Head, SC 29928

Date: August 3, 1992

CERTIFICATE OF SERVICE

I, Evelyn T. Craig, do hereby certify that a true copy of the foregoing Reply Comments of BellSouth Corporation was served this 3rd day of August, 1992, by United States mail, first class postage prepaid, upon the parties listed on the attached service list.


Evelyn T. Craig

SERVICE LIST
RM-7985

Fleet Call, Inc.
Robert S. Foosaner
Lawrence R. Krevor
1450 G Street, N.W.
Washington, D.C. 20036

David E. Weisman
Alan S. Tilles
Meyer, Faller, Weisman
& Greenburg, P.C.
National Assn. of Bus. and
Ed. Radio, Inc.
4400 Jenifer St., N.W.
Suite 380
Washington, DC 20015

Alan R. Shark, President
American Mobile
Telecommunications Assn., Inc.
1835 K Street, N.W., Suite 203
Washington, D.C. 20006

Paul J. Sinderbrand
Dawn G. Alexander
Keck, Mahin & Cate
Express Communications
1201 New York Ave., N.W.
Penthouse Suite
Washington D.C. 20005-3919

Eric Schimmel, Vice Pres.
Telecommunications Industry Assn.
2001 Pennsylvania Ave., N.W.
Suite 800
Washington, D.C. 20006

The Florida SMR Coalition
Russell H. Fox
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

William J. Blackburn, Chairman
TIA Land Mobile Section
Ericsson GE Mobile Com., Inc.
Mountain View Road
Suite 1680
Lynchburg, VA 24502

The Ericsson Corporation
David C. Jatlow
Young & Jatlow
2300 N Street, N.W.
Suite 600
Washington, D.C. 20037

James D. Ellis
William J. Free
Mark P. Royer
Southwestern Bell Corp.
One Bell Center, Rm. 3524
St. Louis, Missouri 63101

Telocator
R. Michael Senkowski
Jeffrey S. Linder
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

McCaw Cellular Communications
Mark R. Hamilton
Scott K. Morris
5400 Carillon Point
Kirkland, WA 98033

Util. Telecom. Council
Jeffrey L. Sheldon
Mara J. Primosch
1140 Connecticut Ave., NW
Suite 1140
Washington, DC 20036

SPECIAL INDUSTRIAL RADIO
SERVICE ASSN., INC.
Wayne V. Black
Terry J. Romine
Keller and Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

AMERICAN PETROLEUM
INSTITUTE
Wayne V. Black
Terry J. Romine
Keller and Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

Idaho Communiations
Limited Partnership
Raymond J. Kimball
Ross & Hardies
888 16th Street, N.W.
Washington, D.C. 20006

National Telephone
Cooperative Assn.
David Cosson
L. Marie Guillory
2626 Pennsylvania Ave., NW
Washington, D.C. 20037

Dispatch Communiations, Inc.
Joel M. Margolis
Regulatory Counsel
4600 East-West Highway
Suite 620
Bethesda, MD 20814

Centel Corporation
Charles F. Wright
Vice Pres.-Corp. Dev.
8725 Higgins Road
Chicago, IL 60631